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Sent via e-mail, hand delivery and/or U.S. Mail

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: UNE Triennial Review Regarding Switching for Enterprise Customers,
D.T.E. 03-59

Dear Ms. Cottrell:

The Attorney General submits these comments to the Massachusetts Department of Telecommunications and Energy ("Department" or "DTE") in response to the Department's Procedural Memorandum (September 26, 2003). In reviewing the participants' presentations, the Department should consider carefully all claims by competitive local exchange carriers ("CLECs") of impairment to serve enterprise customers.¹ The Department should also require Verizon to provide a detailed, updated Massachusetts Competitive Profile that shows the CLEC market shares and actual deployment of CLEC and Verizon switches.

The Department opened this docket to determine whether to petition the Federal Communications Commission ("FCC") for a waiver of the FCC's national finding of "no impairment" for unbundled local switching for enterprise customers. D.T.E. 03-59, Vote and

¹ The Federal Communications Commission defines an "enterprise" customer for switch impairment purposes as a customer who is served by a DS1 (also known as a T-1) level circuit or higher. All other customers are considered "mass market" customers. *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, 96-98, and 98-147 (rel. August 21, 2003) ("TRO"), page 12. Mass market customers include residential and very small sized business customers. *Id.* Further distinction between the very small business market and small to medium-sized business market based on DS0 to DS1 cross-overs should be left for the discussion that will take place in D.T.E. 03-60.

Order to Open Investigation (August 26, 2003). The Department views its purpose in this proceeding as “gathering facts in order to determine whether to begin a proceeding before the FCC.” Tr. A, p. 8. The Department directed participants to make a “granular showing” of impairment in geographic markets as part of its efforts to implement the FCC’s imperatives. Tr. A, p. 9-10; TRO, par. 455. The Department also asked participants to address Verizon’s claim that the extent of actual deployment of switches shows no impairment. *Id.*, p. 10.

The Department should carefully consider each and every CLEC claim of impairment of enterprise switching because the Department must act as a fact-gatherer.² Three CLECs have already indicated their willingness to participate in this docket because of their impairment concerns,³ and the Department should afford these and other participants a full opportunity to present their claims through discovery, hearings and briefing. The Department cannot fulfill its FCC-prescribed role if it summarily dismisses CLEC claims without further inquiry. Only by examining a participant’s showing through discovery and hearings will the Department be able to determine whether impairment exists for enterprise customers.

Verizon contended in its comments that the extent of actual deployment of switches in Massachusetts by competitive providers demonstrates that requesting carriers are not impaired without unbundled access to Verizon’s switches. Verizon Comments, pp. 7-9 (September 16, 2003). The Department should ascertain information about the extent of actual deployment of switches, by wire center and ownership, and the Department can obtain this information from Verizon’s updated Massachusetts Competitive Profile, developed and reported in *Verizon’s Alternative Regulation Plan*, D.T.E. 01-31. The Profile’s summary report shows market share data and its underlying detail report presents incumbent and CLEC switch location and ownership as of December 2002.

Data on market share and switch location are integral pieces of the Department’s analyses of operational and economic criteria that may demonstrate local switching impairment. TRO, pars. 456, 457. Verizon has already prepared summary and detailed reports reflecting this data as of December 2002 for D.T.E. 01-31, and updating that information in this docket would require minimal effort and time. In addition to other data, the Department should direct Verizon to produce the summary and detailed reports from an updated Massachusetts Competitive Profile.⁴

² “The states must consider all relevant factors in determining whether entry is uneconomic in the absence of unbundled access to local circuit switching.” TRO, par. 458.

³ DSCI Corporation, InfoHighway Communications Corporation, and American Long Lines, Inc., asked the Department to investigate their impairment claims in this proceeding. Tr. A, p. 6.

⁴ Verizon filed an December 2002 summary report from the Profile in DTE 01-31 Phase I on February 19, 2003, but not the detailed reports which show switch ownership and location.

Conclusion

For these reasons, the Department should review and address all participant showings of impairment using all relevant operational and/or economic criteria, discovery and hearings. Towards this end the Department should direct Verizon to produce a detailed, updated Massachusetts Competitive Profile which includes (but is not limited to) market share, switch locations and switch ownership data.

Sincerely,

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cc: Jesse S. Reyes, Hearing Officer (w/8 copies)
D.T.E. 03-59 service list

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Proceeding by the Department of Telecommunications and Energy on its)
own Motion to Implement the Requirements of the Federal)
Communications Commission's Triennial Review Order Regarding)
Switching for Large Business Customers Served by High-Capacity Loops.)

D.T.E. 03-59

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated in the attached service list by e-mail and either hand-delivery or mail.

Dated at Boston this 9th day of October 2003.

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